

6 August 2020

Our Ref: [REDACTED]
Please reference in all correspondence

Mr Peter Achterstraat
NSW Productivity Commission
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SYDNEY NSW 2001

By email: ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat

Canterbury Bankstown Council submission to the Review of Infrastructure Contributions in New South Wales Issues Paper

Thank you for the opportunity to comment on the Review of Infrastructure Contributions in New South Wales Issues Paper prepared by the NSW Productivity Commission.

Council is supportive of reforming the contributions system to make it simpler and to allow more efficient provision of local and regional public infrastructure.

This submission sets out Council's recommendations to the review in Attachment A, with the body of the submission arranged according to the headings contained in Chapter 5 of the Issues Paper - i.e. issues identified by the Commission for further exploration by stakeholders.

As the largest Council in NSW, I am also requesting that Canterbury Bankstown Council participate in the roundtable meetings.

If you wish to discuss Council's submission to this review, please contact Council's General Manager, [REDACTED]

Yours sincerely

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ATTACHMENT A – CANTERBURY BANKSTOWN CITY COUNCIL'S SUBMISSION

Summary of Recommendations

1. Council supports a holistic approach and multiple strategies to broaden the revenue base that local Councils can draw on to fund growth infrastructure including:
 - Relaxing or removing the rate pegging restrictions in areas targeted for growth.
 - Develop new funding sources based on sharing any unearned land value gains resulting from zoning or infrastructure decisions, such as value capture or a betterment levy.
 - Ensuring that revenue from contributions is maximised and not restricted by artificial thresholds currently imposed at the State Government level.
2. The Review provide more detail on the government's commitments in its response to IPART's Review of the Local Government Rating System to assist councils to align income growth with population growth.
3. Councils be allowed to include relevant land value and construction cost indexes in plans to ensure land and works costs are reflected more accurately and keep pace with cost changes. The State government could assist by commissioning the Valuer General to derive a suitable property price index that can be applied to land acquisitions in contributions plans.
4. Special Infrastructure Contributions should not be prepared in isolation of Council's infrastructure contributions plans. Infrastructure that supports the future housing and jobs growth of a region should be implemented in conjunction with local infrastructure needs. A single document should be prepared to outline all the infrastructure needs, cost and implementation responsibilities for a region. This will provide transparency to the community, State agencies, Councils and developers.
5. Council agrees that s7.11 contributions plans are too complex and resource-intensive; and supports an alternative of fixed rate s7.12 levies applying to all development in established areas; and higher fixed rate levies to apply to growth areas in established areas.
6. The fixed rate levy should not be one size that fits all development types, but broadly reflect total infrastructure impacts. For example, a lower rate should be set for job generating developments that build the local economy, and a higher rate of at least 5% for developments that accommodate an increased resident population.

7. The essential works list should be updated in collaboration with local councils so that it is relevant to the infrastructure needs of urban renewal and infill urban areas.
 8. Planning Agreements be retained as part of the current suite of mechanisms for providing infrastructure. They are valuable for addressing the infrastructure needs of unanticipated development, and addressing contribution matters not able to be dealt with or included in contributions plans.
 9. State agencies and other planning authorities that regularly enter into planning agreements be subject to the same rigour in process, probity and transparency that Councils are subject to.
 10. Until a well-designed betterment levy is established by the State Government, the use of the planning agreements should not be restricted to deny councils from applying a value sharing mechanism to fund local infrastructure.
 11. Council supports a user-friendly approach in informing the community about how contributions are calculated, collected and spent.
 12. The following principles inform changes to the way Councils and other planning authorities report on contributions funds and infrastructure delivery:
 - be informative and easy to read
 - be web accessible
 - use electronic tools that allow for real-time reporting
 - reflect the scale of contributions activity occurring in the LGA.
- Similar to the e-planning forms, the State government should financially assist councils in setting up and maintaining these electronic reporting systems.
13. The State government tighten the regulatory regime regarding private certifiers obligations to impose correctly calculated contributions requirements and ensure payment of these contributions at the appropriate stage of development.

1 Local government rate pegging

1.1 Relaxing or removing rate pegging

Council currently generates 76 percent of its annual income from its rates base. Like most councils it relies heavily on the rates base to fund local infrastructure services.

Council however is significantly constrained in their ability to generate additional income from existing and new residential development to fund infrastructure projects due to 'rate pegging' by the State government.

The fundamental problem that most Councils face is there is not enough revenue to both provide the services their communities expect and maintain and replace existing assets, let alone fund the capital and life cycle costs of new assets that are needed to support development growth.

Council's view is that the Review must deal holistically with the causes of the problem of insufficient local government revenue and develop solutions to this issue.

One potential strategy that would assist metropolitan councils is for rate pegging to be 'switched off' or relaxed for land that has been rezoned to permit higher densities of development. This would allow Council's revenue base to grow in alignment with locations anticipated to generate increased demands for upgraded and new infrastructure.

The State Government, in its recent response to IPART's Review of the Local Government Rating System, rejected a move from the *ad valorem* method or rating land to a method based on Capital Improved Value of land. This was disappointing as it would have facilitated a fairer rating regime linked more to population/development density.

The response however did include a commitment to work with Councils to create additional rating categories and residential rating sub-categories to assist council to align income growth with population growth; as well as supporting the IPART recommendation for a new type of special rate for new infrastructure that is jointly funded with other levels of government. Council awaits details of these commitments, particularly as to whether they will make any material impact on the ability to fund life cycle costs of growth -related infrastructure.

1.2 Complementary strategies that broaden the revenue base

Land rates cannot alone fund the life cycle costs of growth-related infrastructure. Councils need to be given back the flexibility they once had to set developer contributions at a reasonable level.

Council also supports opportunities for additional revenue to fund strategic infrastructure priorities through value sharing - i.e. land owners sharing with the community any unearned land value gains resulting from zoning or infrastructure decisions.

Many Sydney councils have sought to return some of this unearned windfall back to the community by negotiating planning agreements which include a value sharing component. A well-designed betterment levy, with at least some of the proceeds funding local infrastructure, is in the public interest and has considerable potential to fund growth-related infrastructure.

Recommendations:

1. Council supports a holistic approach and multiple strategies to broaden the revenue base that local councils can draw on to fund growth infrastructure including:
 - Relaxing or removing the rate pegging restrictions in areas targeted for growth at the time the land is rezoned to permit greater intensity of land use.
 - Develop new funding sources based on sharing any unearned land value gains resulting from zoning or infrastructure decisions, such as value capture or a betterment levy.
 - Ensuring that revenue from contributions is maximised and not restricted by artificial thresholds currently imposed at the State Government level.
2. The Review provide more detail on the government's commitments in its response to IPART's Review of the Local Government Rating System to assist councils to align income growth with population growth.

2 Rising infrastructure costs

2.1 Increased asset and delivery costs

Rising infrastructure costs are outstripping annual increases in Council's funding sources. This has a negative effect on Council's funding capacity, impacting on the provision of services and funding of maintenance for existing assets.

New assets often include higher level specifications to comply with updated engineering standards. New assets also have additional ongoing maintenance costs on top of existing upkeep costs. While these items can be designed with longer lifespans to reduce recurring costs, these can only be reduced only so far and will normally result in higher upfront design and construction costs.

2.2 Land acquisition

New developments and the people that live and work in them, expect to be provided with the same level and quality of public amenities that the existing communities enjoy.

This is supported by additional requirements or higher standards of design implemented by State government. For example, the NSW Government Architect's draft Greener Places Design Guide contains performance measures for access to and capacity of parks and recreation facilities. In urban renewal areas this will inevitably mean more land will need to be acquired for open space. For Council to acquire land for open space it must purchase it at higher market values.

Indexation of land prices in contributions plans only go so far in allowing developer contributions to keep up with land prices. Indexation is inadequate in times of buoyant property activity, or when land price speculation is widespread. Land prices often rapidly increase on the back of preliminary planning announcements or media releases, with unearned windfall gained by existing landowners from the expectation of increased development potential. This either eliminates or reduces the opportunity for communities to obtain a share of that windfall that can be reinvested in the provision of infrastructure.

Over time, the land and construction costs in the plans become outdated and relevant indexes are required to reflect the changes in cost. As noted in the Issues Paper the current Consumer Price Index issued by the Australian Bureau of Statistics does not adequately capture the real changes in cost.

One avenue that could be pursued to allow Councils to better keep pace with property price inflation is to commission the Valuer General to derive a suitable property price index that can be applied to land acquisitions in contributions plans.

Recommendation:

3. Councils be allowed to include relevant land value and construction cost indexes in plans to ensure land and works costs are reflected more accurately and keep pace with cost changes. The State government could assist by commissioning the Valuer General to derive a suitable property price index that can be applied to land acquisitions in contributions plans.

3 Inconsistency in the application of special infrastructure contributions under s7.24 of the EP&A Act

Special Infrastructure Contributions (SICs) to date have not met their intended goals through a combination of ad hoc application, inconsistency with local infrastructure plans and items and a narrowed scope of infrastructure types.

The draft infill area SICs that have been proposed have also included facilities which crossover with Councils local contributions plans creating ambiguity for which plan the items are being levied under. SICs also represent a parallel contributions plan process that runs independent of Councils local infrastructure contributions plan preparation. Having separate state and local development contribution plan processes that do not speak to each other adds unnecessary complexity, ambiguity and administrative burden.

Instead, the planning processes for an area proposed to be rezoned for increased development density should involve a comprehensive state, regional and local infrastructure assessment with the view to produce a comprehensive list of all infrastructure requirements.

This list should then be matched to a funding and delivery plan, with agency responsibilities, infrastructure costs and priorities. This approach would provide clarity on the funding sources and level of delivery across government, and reflects the Place Infrastructure Compact approach being rolled out by the Greater Sydney Commission.

Council also considers that biodiversity offsets should not be solely be managed through SICs. The percentage of the SICs dedicated to enhancement of biodiversity values should be subject to independent oversight to ensure these funds are used appropriately. Biodiversity offsets should not compete with other types of infrastructure and recreational open space for funding. Biodiversity should also be offset as soon as practicable to ensure sufficient habitat exists for the biodiversity removed.

Recommendation:

4. Special Infrastructure Contributions should not be prepared in isolation of Council's infrastructure contributions plans. Infrastructure that supports the future housing and jobs growth of a region should be implemented in conjunction with local infrastructure needs. A single document should be prepared to outline all the infrastructure needs, cost and implementation responsibilities for a region. This will provide transparency to the community, State agencies, Councils and developers.

4 'Nexus' requirements in s7.11 contribution plans

Much new and upgraded infrastructure provided in existing inner and middle urban areas needs to be designed to meet both existing and future needs. The conventional nexus-based s7.11 plan approach in these areas will under current legislation, always be encumbered with having to apportion part of the costs to new development. This limits the ability of s7.11 plans in infill council areas to fund the full cost of infrastructure items.

Growing inner and middle ring LGAs such as Canterbury Bankstown need to be able to flexibly apply development contributions to provide whole facilities. High contributions fund balances in some established areas are due Council being unable to co-fund facilities. Funds pooling of s7.11 monies only defers that co-funding obligation.

A preferred approach is that established (i.e. non-greenfield) areas should utilise fixed rate (s7.12) levies, but these set at a higher rate than currently permissible to be attractive to fund infrastructure.

Providing Councils with the ability to set more reasonable (higher) fixed rate levies for infill areas would:

- Allow Council to provide a greater number of whole facilities.
- Significantly reduce the plan preparation burden that comes with s7.11 plans, in turn allowing these resources to be directed towards regular update of plans.
- Provide Council to focus more on plan implementation and the project delivery without the burden of paying back pooled funds or finding co-funding sources.

S7.12 rates would depend on the development type and the economic development objectives of the Council. For example, if residential development that increases population (such as additional dwellings) was levied 5% of development cost (instead of the existing 1%), this would roughly equate to the current maximum \$20,000 per dwelling under the s7.11 cap. In this way, equivalent funding would be generated but under a simplified system.

A different levy rate could apply for employment development, as workers generally do not generate the same level of demand for social infrastructure (which make up most of the cost of infill area s7.11 plans) as residents. Additionally, employment development is vital to economic activity and should not be burdened by excessive contributions. A rate of 2% would be more appropriate.

The essential works list limits the type of infrastructure that can be delivered under s7.11 contributions plans. These items are geared towards greenfield development areas with a focus on roads and stormwater. These items are challenging to fund in an infill context due to existing development and limited room for expansion. Community facilities are another infrastructure type excluded from the list which are in demand across all development areas, but are difficult to fund in infill councils due to land acquisition costs.

Broad application of higher fixed rate levies would result in greater scrutiny from developers and the public on whether the monies collected are spent on verifiable growth-related infrastructure. The public interest would be protected if infrastructure lists in new plans were based on a revised essential works list relevant to urban renewal contexts.

The infrastructure provided under higher fixed rate levy plans should be items that genuinely support the development of nominated growth areas - i.e. a revamp of the essential works list so that it is relevant to infill and urban renewal areas.

Guidance on the appropriate infrastructure types should be prepared by DPIE in collaboration with councils.

The infrastructure provided under higher fixed rate levy plans should be items that genuinely support the development of nominated growth areas - i.e. a revamp of the essential works list so that it is relevant to infill and urban renewal areas.

Recommendations:

5. Council agrees that s7.11 contributions plans are too complex and resource-intensive; and supports an alternative of fixed rate s7.12 levies applying to all development in established areas; and higher fixed rate levies to apply to growth areas in established areas.
6. The fixed rate levy not be one size that fits all development types, but broadly reflect total infrastructure impacts. For example, a lower rate should be set for job generating developments that build the local economy, and a higher rate of at least 5% for developments that accommodate an increased resident population.
7. The essential works list should be updated in collaboration with local councils so that it is relevant to the infrastructure needs of urban renewal and infill urban areas.

5 Lack of principles on s7.4 Planning Agreements

Planning Agreements should be retained as part of the current suite of mechanisms for providing infrastructure. They are a valuable tool in dealing with development related infrastructure, services and amenities that are not always possible to anticipate in contributions plans and strategic plans.

Planning agreements negotiated and entered into in accordance with a clear and transparent policy should not undermine confidence in the planning system.

In terms of nexus, Council's view is that the current State government policy expressed in the current draft practice note is adequate - i.e. the public benefits in an agreement should not be wholly unrelated to the development which is the subject of the agreement.

It appears that a major concern with planning agreements stem from their use for capturing a share of the land value uplift associated with development and rezoning approvals.

This is likely to have been a direct result of State government constraining the ability for councils to fund infrastructure and services through the traditional mechanisms of general rates and developer contributions, as discussed in section 1 of this submission.

The sharing of land value uplift resulting from planning decisions is a legitimate activity that is in the public interest, but planning agreements are unlikely to be the optimum mechanism. A betterment levy fairly applied to land that receives value uplift from infrastructure investment and/or planning decisions is a better mechanism. However, until a betterment levy is established by the State Government, the use of the Planning Agreements should not be restricted to deny Councils from applying a value sharing mechanism to fund local infrastructure.

There is a draft planning agreement practice note that, when finalised, all Councils will have to have regard to when preparing planning agreements. There is no similar guideline that applies to State agencies when they are preparing planning agreements. This inconsistency in approach is not in the public interest, and State agencies should adhere to a practice note, guideline or similar to maintain and improve public confidence in the contributions system.

Recommendations:

8. Planning Agreements should be retained as part of the current suite of mechanisms for providing infrastructure. They are valuable for addressing the infrastructure needs of unanticipated development, and addressing contribution matters not able to be dealt with or included in contributions plans.
9. State agencies and other planning authorities that regularly enter into planning agreements should be subject to the same rigour in process, probity and transparency that Councils are subject to.
10. Until a well-designed betterment levy is established by the State Government, the use of the planning agreements should not be restricted to deny councils from applying a value sharing mechanism to fund local infrastructure.

6 Lack of transparency and certainty

6.1 New system must be built on the simplicity principle

A key issue is the contributions system requires simplification. It is not easily understood except by specialised professionals. The system is multi-layered, fragmented, not transparent, and overly complex. Some of the issues relating to lack of transparency and certainty are because of its complexity.

Council supports the Productivity Commission's position that:

Simplicity is an essential design principle that will be used to underpin reform recommendations. (Issues Paper, p14)

Some potential reforms to achieve simplification (some of which have been already expressed in this submission) are:

- State and local responsibilities be merged into a single, comprehensive infrastructure funding and delivery plan.
- Shift the focus away from deriving the contribution rate to efficient spending on the infrastructure priorities.
- Remove State imposed special infrastructure contributions and instead use a betterment levy or the like to fund a portion of the cost of state infrastructure.
- Introduce standardised procedures and charging (some examples include works in kind procedures, indexing, and timing of payments)

Simplicity should form one the key principles for a reformed contributions system along with efficiency, equity, and certainty.

6.2 Reader-friendly and regular reporting

Council believes that information and reporting on contributions funds and infrastructure delivery should:

- be informative and easy to read
- be web accessible
- use electronic tools that allow for real-time reporting
- reflect the scale of contributions activity occurring in the LGA.

While the contributions system may be able to be simplified, the tracking of payments from the many types of planning applications and the expenditure of monies on hundreds of items in each Council will never be a task that can be reliably done using manual methods and procedures. The use of electronic tools and media are necessary to improve access to and transparency of the contributions system.

The proposed draft amendments to the *Environmental Planning and Assessment Regulation 2000* include several measures that will improve transparency of contributions and planning agreements, including:

- making available all planning agreements, explanatory notes and amendments in an electronic format
- requiring more detailed reporting on the progress of contributions plans including the type, quantum and form contributions were received.

Councils and agencies should be able to use a standard return form or spreadsheet to promote regular and easy to administer updates of the electronic register. In this regard, it is noted the Queensland government is implementing a similar approach and transferability to NSW should be investigated by the Review.

Recommendations:

11. Council supports a user-friendly approach in informing the community about how contributions are calculated, collected and spent.
12. Council recommends that the following principles inform changes to the way Councils and other planning authorities report on contributions funds and infrastructure delivery:
 - be informative and easy to read
 - be web accessible
 - use electronic tools that allow for real-time reporting
 - reflect the scale of contributions activity occurring in the LGA.

Similar to the e-planning forms, the State government should financially assist councils in setting up and maintaining these electronic reporting systems.

7 Misalignment between contributions payments and delivery of infrastructure

While the recent Ministerial Direction allowing deferral of contribution payments to the occupation certificate stage for developments over \$10 million in value will assist larger developers' cash flow eventually see approved projects delivered sooner, the risk to Council of non-payment by a certifier still exists.

Council is concerned with the potential unintended consequences of this direction, as Councils generally have limited resources to pursue and enforce outstanding contributions from private certifiers for complying development. It will also mean a larger time gap between Council receiving the required contributions and delivering the infrastructure they are collected for.

There is also little oversight and consequences to misconduct by private certifiers for not applying contributions amounts on the complying development certificates. This has led to no payment of contributions and places undue administrative pressure on Council to recover these payments. For these reasons Council does not support further or widespread deferral of contributions to the occupation certificate stage.

There needs to be tighter regulatory control of the private certification system to ensure contributions are correctly calculated and paid when they are due. Council believes there are opportunities to improve this situation by requiring certifiers through the contributions plan to perform their contributions obligations the Council only.

Recommendation:

13. The State government tighten the regulatory regime regarding private certifiers obligations to impose correctly calculated contributions requirements and ensure payment of these contributions at the appropriate stage of development.